

In the Matter Of:

In Re - LTL Management LLC

JOHN KIM

June 01, 2023



Page 1	Page 3
Page 2	Page 4

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Page 21	Page 23
<p>1 J. KIM</p> <p>2 liability minus the assets of LTL. And, you</p> <p>3 know, again, I told you we're aware of what</p> <p>4 the magnitude of that liability is.</p> <p>5 Q. Okay. Thank you. That's helpful.</p> <p>6 So just to put it another way, to</p> <p>7 use your words, J&J's cap on its liability</p> <p>8 was 61 odd billion dollars, correct?</p> <p>9 A. I would defer to the documents to</p> <p>10 what they actually say. But what -- you</p> <p>11 know, the characterization of that liability.</p> <p>12 But, again, you know, that's a hypothetical</p> <p>13 number because there is no -- we don't think</p> <p>14 there is any possible way that the liability</p> <p>15 would get to that.</p> <p>16 I think as explained -- and I'm</p> <p>17 going to refer to the objection to the</p> <p>18 omnibus petition that was recently filed --</p> <p>19 I'm sorry, the objection to the motions to</p> <p>20 dismiss, the omnibus objection to the motion</p> <p>21 to dismisses that were filed, that goes</p> <p>22 through the whole rationale of the Funding</p> <p>23 Agreement.</p> <p>24 Q. Okay. So, again, I just want to</p> <p>25 get this correct. You believe that J&J's</p>	<p>1 J. KIM</p> <p>2 believe the value of the Funding Agreement --</p> <p>3 the second Funding Agreement was?</p> <p>4 A. The value of the second Funding</p> <p>5 Agreement was the same of the value of the</p> <p>6 first Funding Agreement. It is the liability</p> <p>7 of the talc liability minus the assets of</p> <p>8 LTL. And, again, we did not believe that the</p> <p>9 talc liability approached near \$30 billion.</p> <p>10 So that would be the -- you know, the value</p> <p>11 of the Funding Agreement.</p> <p>12 Q. I'm sorry, I lost that. You said</p> <p>13 "that would be the value"?</p> <p>14 A. That would be -- that would be --</p> <p>15 whatever the liability is, which, again, is a</p> <p>16 little difficult to determine outside of</p> <p>17 bankruptcy because, basically, you have the</p> <p>18 cost, the aberrant verdicts, you know, the</p> <p>19 settlements that we might enter into. But</p> <p>20 whatever the liability is -- it's the same</p> <p>21 value -- let's put it this way, it's the same</p> <p>22 value as the first one. It is the liability</p> <p>23 of the talc litigation minus the assets of</p> <p>24 LTL.</p> <p>25 What I was -- I further said that</p>
Page 22	Page 24
<p>1 J. KIM</p> <p>2 hypothetical cap on liability under the first</p> <p>3 Funding Agreement was in the neighborhood of</p> <p>4 \$61 billion.</p> <p>5 Did I get that right?</p> <p>6 A. I think it could be, yes. I would</p> <p>7 say could be.</p> <p>8 Q. Okay. So, now, I want to roll</p> <p>9 forward a little bit to April 4th of 2023,</p> <p>10 the date the second bankruptcy petition of</p> <p>11 LTL was filed.</p> <p>12 What is your understanding of</p> <p>13 LTL's assets at the time that it filed</p> <p>14 bankruptcy about two months ago, give or</p> <p>15 take?</p> <p>16 A. Again, I think I went through this</p> <p>17 the first deposition. The assets of LTL were</p> <p>18 the cash on hand, which I think was about</p> <p>19 \$30 million at the time. The value of RAM,</p> <p>20 the insurance proceeds that it had rights to,</p> <p>21 and the Funding Agreement with HoldCo -- in</p> <p>22 bankruptcy, the backstop by the supportive</p> <p>23 agreement by Johnson & Johnson.</p> <p>24 Q. Okay. And what do you believe was</p> <p>25 the -- on April 4th of 2023, what do you</p>	<p>1 J. KIM</p> <p>2 that liability itself, we did not believe</p> <p>3 neared the \$30 billion -- \$30 billion which</p> <p>4 is what the -- the market value of HoldCo</p> <p>5 was.</p> <p>6 Q. Okay. I get it. And that's</p> <p>7 helpful. Thank you.</p> <p>8 But in terms of, if, God forbid,</p> <p>9 you were wrong and the talc liabilities</p> <p>10 approached \$60 billion, under Funding</p> <p>11 Agreement 1, there would have been available</p> <p>12 funding to cover that amount of liabilities,</p> <p>13 correct?</p> <p>14 A. I think it's a hypothetical</p> <p>15 question. You know, the facts are that we do</p> <p>16 not believe that the liability comes close to</p> <p>17 \$30 billion. In fact, we have an additional</p> <p>18 data point now which is the \$8.9 billion</p> <p>19 settle- -- proposed settlement, which the</p> <p>20 majority -- the majority of claimants, we</p> <p>21 believe, support. So that's another</p> <p>22 indication in bankruptcy of what the value of</p> <p>23 the litigation is. Again, which doesn't</p> <p>24 approach the \$30 billion.</p> <p>25 Q. Okay. Let's turn to that. My</p>

Page 25	Page 27
<p>1 J. KIM</p> <p>2 next question, obviously, is, what was the</p> <p>3 value or the total amount of LTL's</p> <p>4 liabilities when it filed bankruptcy on</p> <p>5 April 4, 2023?</p> <p>6 So what was the total amount of</p> <p>7 LTL's liabilities when it filed its second</p> <p>8 bankruptcy?</p> <p>9 A. Again, outside -- so outside of</p> <p>10 bankruptcy, the liability is both variable</p> <p>11 and volatile, right. So it really depends.</p> <p>12 We know what the expenses were prior to the</p> <p>13 first filing, which we -- if anything, would</p> <p>14 increase slightly, or could increase after</p> <p>15 the passage of time.</p> <p>16 We know the number of cases where</p> <p>17 claims that are out there, which, again, has</p> <p>18 increased -- our knowledge of them has</p> <p>19 increased over time. Again, we know that</p> <p>20 there are aberrant -- there are aberrant jury</p> <p>21 verdicts. There are some settlements that we</p> <p>22 have. So we did not do a formal analysis of</p> <p>23 what the -- of what the total liability is,</p> <p>24 but there are data points.</p> <p>25 Two of the critical data points</p>	<p>1 J. KIM</p> <p>2 had was an \$8.9 billion proposal that was</p> <p>3 accepted by the vast majority of claimants.</p> <p>4 We had the \$4.2 billion proposal that was</p> <p>5 floated by the plaintiffs, you know, earlier.</p> <p>6 And so, you know, we had a number</p> <p>7 of -- the number of cases and they were</p> <p>8 growing. So I would -- so we had a good</p> <p>9 estimate that that's, you know, would be a --</p> <p>10 indicators as to the magnitude of the</p> <p>11 liability.</p> <p>12 Q. Do you believe that LTL's total</p> <p>13 talc liabilities on April 4, 2023, exceeded</p> <p>14 \$8.9 billion?</p> <p>15 A. I think there was potential for it</p> <p>16 to exceed \$8.9 billion. Depending -- it</p> <p>17 varies depending upon aberrant verdicts. You</p> <p>18 know, the cost of litigation. You know, it</p> <p>19 may -- again, it would fluctuate. But,</p> <p>20 again, there was no belief that it would --</p> <p>21 that the assets of HoldCo were insufficient</p> <p>22 to fund whatever liability the talc was.</p> <p>23 Q. Okay. So I take it you don't</p> <p>24 believe that LTL's total talc liability on</p> <p>25 April 4, 2023, exceeded \$30 billion; is that</p>
Page 26	Page 28
<p>1 J. KIM</p> <p>2 are the \$4.2 billion for the ovarian cases,</p> <p>3 which we had discussed prior. And we have</p> <p>4 this \$8.9 billion settlement proposal, which</p> <p>5 has been accepted by lawyers representing the</p> <p>6 majority of claimants.</p> <p>7 And so, you know, those give good</p> <p>8 indicators as to the magnitude of the total</p> <p>9 talc liability in bankruptcy.</p> <p>10 Q. Okay. So I take it, on April 4,</p> <p>11 2023, you may have had, I think you said,</p> <p>12 "data points," but you had no estimate, no</p> <p>13 formal or otherwise estimate of total talc</p> <p>14 liabilities of LTL, correct?</p> <p>15 A. That is correct. We did not have</p> <p>16 a formal estimate, but we have years of</p> <p>17 experience of data points. We -- you know,</p> <p>18 we have a good understanding of this</p> <p>19 litigation.</p> <p>20 Q. Okay. So based on your years of</p> <p>21 experience and all of those data points, what</p> <p>22 did you believe LTL's total talc liabilities</p> <p>23 to be as of April 4, 2023?</p> <p>24 A. I would say, again, it's volatile</p> <p>25 and it's variable. The data points that we</p>	<p>1 J. KIM</p> <p>2 right?</p> <p>3 A. I believe that's right, yes. We</p> <p>4 believe -- we believe that LTL and HoldCo</p> <p>5 were solvent with the arrangement that it had</p> <p>6 that its -- that it could meet its</p> <p>7 obligations to fund the litigation.</p> <p>8 Q. Okay. And -- okay. I want to,</p> <p>9 for a minute, talk about the petition date</p> <p>10 again, April 4, 2023, and ask you that, as of</p> <p>11 that date, you had any estimates or</p> <p>12 projections of the cost of continuing to</p> <p>13 litigate in the tort system for LTL?</p> <p>14 MR. JONES: Object to the form</p> <p>15 of the question. I don't discern a</p> <p>16 difference between what you just</p> <p>17 asked. Maybe you can help us, Jeff.</p> <p>18 MR. JONAS: You don't discern a</p> <p>19 difference between total liability and</p> <p>20 the actual legal and related costs</p> <p>21 that it would cost to defend those</p> <p>22 lawsuits?</p> <p>23 MR. JONES: Are you speaking to</p> <p>24 cost of defense? Is that all you want</p> <p>25 to talk about?</p>

Page 29

1 J. KIM
2 MR. JONAS: If I was unclear, I
3 apologize.
4 BY MR. JONAS:
5 **A. Again, we did not do a formal**
6 **analysis of that. But, again, I think, as I**
7 **testified to in the first bankruptcy, we do**
8 **have information about how much it cost to do**
9 **trials. We have monthly -- at that point,**
10 **the run rates of the cost of litigation.**
11 **Those costs would increase over time as the**
12 **number of cases that have to be prepared**
13 **increase.**
14 **So we have an idea. We did not do**
15 **a formal analysis, but we do have an idea**
16 **that the costs are substantial.**
17 Q. And is that all -- I just want to
18 test whether you can give me any more
19 specific amounts or numbers, other than -- is
20 the best you can do is to tell me that you
21 think that the costs of defense of LTL
22 remaining in the tort system, after the first
23 bankruptcy case was dismissed, those costs
24 would be quote, unquote, "substantial"?
25 Is that all you can say on that

Page 30

1 J. KIM
2 topic?
3 **A. Well, no. What I can say is, if**
4 **you give me a pen and pencil and I go back to**
5 **the data, I could probably calculate it in**
6 **ten minutes. If you want to take the time to**
7 **do it.**
8 **The cost -- there is no question**
9 **about what these costs are. You know, we can**
10 **get that data easily. We didn't think it was**
11 **necessary to do that because they were**
12 **substantial. That's what I'm saying.**
13 Q. When you say "substantial," how do
14 you use that word? What do you mean?
15 **A. Again, I think we were running,**
16 **you know -- we can go back to the data, you**
17 **know, of the run rates, a couple million**
18 **dollars, you know, a month at that time. You**
19 **know, trials cost a couple million dollars**
20 **each time you go to trial.**
21 **Depending upon -- again, there is**
22 **variability of volatility because, depending**
23 **upon how many cases get set for a particular**
24 **time period, we have more work that has to be**
25 **done. Any time there are trials set, there**

Page 31

1 **J. KIM**
2 **is more work. You need to find additional**
3 **lawyers to do trials. There is additional**
4 **work. So it is -- it's substantial.**
5 Q. And, sir, what is the best number
6 or approximate amount that you can provide
7 today, sitting here today, as to what LTL's
8 estimates or projections of legal defense
9 costs would have been had it remained in the
10 tort system after April 4, 2023?
11 **A. So I don't have it sitting here**
12 **today. I can go back to the presentation**
13 **made at the first motion to dismiss. It was**
14 **numbered a little higher on April 4 because**
15 **the increase in cases, but that would be a**
16 **good indication of what the number is. I**
17 **don't have that in front of me right now. I**
18 **can probably try to dig it up if you would**
19 **like, but the data is there.**
20 Q. Okay. But, again, as the Chief
21 Legal Officer of LTL, sitting here today, you
22 are unable to provide any estimate or
23 approximation of the amount of legal defense
24 costs that LTL would have incurred had it
25 remained in the tort system after April 4,

Page 32

1 J. KIM
2 2023?
3 Have I got that right?
4 **A. Yes, it does --**
5 MR. JONES: Let me object,
6 Mr. Kim.
7 I object as asked and answered.
8 And he's directed you to where that
9 can be found.
10 BY MR. JONAS:
11 **A. Sitting here today, without having**
12 **my notes in front of me, without having the**
13 **data available to me, I cannot give you a**
14 **good estimate. But I can easily get it if**
15 **you give me the opportunity to look through**
16 **the data.**
17 Q. Yeah, sure. I'm happy -- when we
18 take a break, that would be great. I'll take
19 you up on your offer. You can take the ten
20 minutes you said you needed and that would be
21 wonderful. Thank you, Mr. Kim. I appreciate
22 it.
23 **A. That's ten minutes if I can find**
24 **the information.**
25 Q. We will find out if you can.

Page 61

1 J. KIM
2 You are also refusing to answer my
3 question as to what other options were
4 discussed between LTL and J&J other than the
5 funding -- second Funding Agreement, which
6 was entered into, correct?
7 **A. On advice of counsel, I'm not -- I**
8 **do not want to waive privilege on those**
9 **issues.**
10 MR. JONES: And just to be
11 clear, Jeff, those were discussions
12 between and among counsel, not just
13 any other discussions that he may be
14 aware of that occurred in some other
15 fashion with some other participants.
16 MR. JONAS: Thank you, Jim. And
17 I'm not trying to be pedantic here. I
18 have to build a record for now and
19 future use, as you know, and we have
20 got to do this.
21 So I appreciate you and
22 Mr. Kim's patience with me. Thank
23 you.
24 BY MR. JONAS:
25 Q. Okay. A few more questions in

Page 62

1 J. KIM
2 this regard, Mr. Kim. And, again, if you --
3 you'll answer as you see fit, and I
4 appreciate that.
5 MR. JONES: Jeff, before you go,
6 it's over an hour.
7 MR. JONAS: I'm sorry. Yeah,
8 let's take a break. If it's okay with
9 you guys, that's a good idea.
10 MR. JONES: Yes, I saw you
11 pausing for a minute. I thought I
12 would take advantage.
13 MR. JONAS: No, no, no. It's
14 11:11. Do you want to come back at
15 11:20?
16 MR. JONES: Fine.
17 THE VIDEOGRAPHER: We are now
18 going off the record. The time is
19 11:11.
20 (Whereupon, a recess was held.)
21 THE VIDEOGRAPHER: We are now
22 back on the record. The time is
23 11:23.
24 BY MR. JONAS:
25 Q. Mr. Kim, first, I wanted to see if

Page 63

1 J. KIM
2 you, during the break, had a chance -- you
3 were going to do some -- you offered, and I
4 took you up on your suggestion, to take a
5 look at talc legal defense costs.
6 Were you able to do that?
7 **A. I'm sorry, I completely forgot. I**
8 **did not. I don't have materials. I'm**
9 **sitting at home. I don't know that I have**
10 **the materials that I need to do that.**
11 Q. Okay. Well, I'll remind you
12 before the lunch break and hopefully you can
13 accommodate.
14 **A. Can I talk to my attorneys to get**
15 **me the materials that I need to do this?**
16 Q. Sure. Absolutely. Do whatever
17 you need to do.
18 But just coming back to that --
19 and perhaps I asked this question which led
20 to your offering to do that work. So -- but
21 if not -- and if I did, I apologize, but let
22 me -- I just -- I want to make sure I cover
23 off on the question, which was, at the time
24 -- and it's probably a slightly different
25 question.

Page 64

1 J. KIM
2 At the time that LTL filed
3 bankruptcy again on April 4, 2023, did you,
4 at that time prior to the filing, have any
5 estimate -- any actual estimate or
6 projections of legal defense costs going
7 forward, whether it was, you know, three
8 months, six months, a year, et cetera?
9 **A. So, no. Again, we did not do a**
10 **formal estimate. But, again, we have the**
11 **data available from the first bankruptcy**
12 **where we went through the cost of the**
13 **litigation. That was available to us. The**
14 **only duty would have been that there were**
15 **probably additional costs that you would have**
16 **to account for in additional to renewal that**
17 **claimants that we knew of.**
18 Q. Okay. And I'll remind you
19 again -- and maybe we can put a stake in that
20 line of questioning after you have had a
21 chance to look for those materials.
22 So, returning to where we left
23 off, did LTL ever request that J&J's --
24 strike that. Strike that.
25 Let me ask, J&J's total liability,

Page 65

1 J. KIM
2 maximum or total cap of liability, under
3 Funding Agreement 2 is \$8.9 billion, correct?
4 MR. JONES: Object to form.
5 **A. Under the Support Agreement, its**
6 **liability is what the -- is the amount that**
7 **was part of the Support Agreement, which is**
8 **the \$8.9 billion to fund the full, you know,**
9 **resolution of the liability.**
10 Q. And do you understand that to be a
11 cap on J&J's liability?
12 **A. Well, it's the amount that they**
13 **are -- it is an agreed upon amount that J&J**
14 **and attorneys for the majority of talc**
15 **claimants have agreed to. I don't know if**
16 **you can characterize that as a cap. That is**
17 **the amount of money that J&J said that it**
18 **would put in.**
19 Q. Do you believe that J&J could be
20 obligated to pay more than \$8.9 billion under
21 either Funding Agreement 2 or the Support
22 Agreement?
23 **A. I think that's a hypothetical**
24 **question. It's the amount of liability --**
25 **the amount that J&J has committed to pay is**

Page 66

1 J. KIM
2 **\$8.9 billion.**
3 Q. Has LTL done any analysis as to
4 whether or not J&J could be obligated for
5 more than \$8.9 billion under Funding
6 Agreement 2 or the Support Agreement?
7 **A. We have not undertaken any**
8 **analysis. We reviewed the Agreement. The**
9 **Agreement says what it says.**
10 Q. Which is that the maximum
11 liability of J&J is -- under the Funding
12 Agreement 2 and Support Agreement is
13 \$8.9 billion, correct?
14 **A. I believe that's correct, yes.**
15 Q. Okay. So during the, as you refer
16 to it, "discussions" that LTL had with new
17 JJCI and J&J relating to termination of
18 Funding Agreement 1 and entering into Funding
19 Agreement 2, did LTL ever request that J&J's
20 maximum liability be higher than
21 \$8.9 billion?
22 MR. JONES: Objection to the
23 question because it calls for the
24 sharing of what I believe Mr. Kim will
25 confirm are privileged communications

Page 67

1 J. KIM
2 with parties who share a common
3 interest.
4 BY MR. JONAS:
5 **A. My understanding is that the**
6 **\$8.9 million was a negotiated amount between**
7 **J&J and attorneys representing the majority**
8 **of claimants. There was no -- I don't think**
9 **-- there was no analysis done as to whether**
10 **wore -- J&J could pay more. That was a**
11 **negotiated amount between J&J and the**
12 **attorneys representing, again, the majority**
13 **of claimants.**
14 Q. Are you saying that LTL was not
15 involved in the negotiations as to the amount
16 that J&J would be responsible for under
17 Funding Agreement 2 and the Support
18 Agreement?
19 **A. I'm saying LTL was involved, but**
20 **that amount was a negotiated amount between**
21 **J&J and attorneys for the majority of**
22 **claimants.**
23 Q. Are you saying that LTL allowed
24 that amount, that is the maximum amount of
25 J&J's liability to be determined by the

Page 68

1 J. KIM
2 negotiation between plaintiffs' attorneys and
3 J&J?
4 **A. I'm saying that was the amount --**
5 **that amount was the amount that was**
6 **negotiated and agreed to between J&J and the**
7 **attorneys for the majority of claimants.**
8 **That's the amount to resolve the entire**
9 **litigation in the bankruptcy.**
10 Q. Let's see. Do you recall that in
11 the first bankruptcy, J&J had -- new JJCI had
12 agreed to fund a qualified settlement fund,
13 or QSF, in the aggregate amount of
14 \$2 billion?
15 Do you recall that?
16 **A. I do.**
17 Q. And how was that -- if you recall,
18 how was the \$2 billion amount determined?
19 MR. JONES: Object to
20 foundation.
21 **A. You know, I'm not sure whether I**
22 **testified -- I think I did testify to this in**
23 **the first bankruptcy hearing. You know, at**
24 **this point, I don't recall that -- how that**
25 **amount was determined. I do recall that it**

Page 69

1 **J. KIM**
2 **was, we believed, a fair amount for a QSF.**
3 **But sitting here today, I have not gone back**
4 **to refresh my recollection on how that amount**
5 **was determined.**
6 **Well, it may be in my first -- it**
7 **may be in the first deposition. And I'm**
8 **pretty sure that that question was asked at**
9 **the first bankruptcy.**
10 Q. Did LTL believe that that
11 \$2 billion QSF amount in the first bankruptcy
12 was satisfactory to resolve its talc
13 liability?
14 **A. I think, as I testified, I thought**
15 **that amount was -- could and should satisfy,**
16 **but we understood that the plaintiffs -- the**
17 **Claimants may disagree, and it was not the,**
18 **you know, full amount that would be**
19 **available. That it could be supplemented in**
20 **any negotiated resolution in LTL 1.**
21 Q. Okay. I know you know this,
22 Mr. Kim, but just bear with me because
23 oftentimes, when I take a minute, it actually
24 helps expedite things. So I appreciate that.
25 MR. JONAS: Okay. Let's

Page 70

1 J. KIM
2 introduce what will be Kim number 2,
3 which is tab 7, Deane.
4 Q. It's your Declaration in this
5 case.
6 (Whereupon, Kim Exhibit 2,
7 DECLARATION OF JOHN K. KIM IN SUPPORT
8 OF FIRST DAY PLEADINGS was marked for
9 identification as of this date by the
10 Reporter.)
11 MR. JONES: It was reviewed with
12 Mr. Kim in April as Kim Exhibit 4.
13 MR. JONAS: Thank you.
14 MR. JONES: Actually, I take
15 that back. It was Kim Exhibit 5. I
16 apologize.
17 MR. JONAS: Thank you, again.
18 BY MR. JONAS:
19 Q. Mr. Kim, you should have access to
20 that, I think.
21 **A. I'm downloading it now.**
22 Q. Okay. Just let me know when you
23 are ready.
24 **A. I have it.**
25 Q. Okay. Just to help us through

Page 71

1 J. KIM
2 this line of questioning, first, let me just
3 confirm: This is the Declaration you have
4 filed in this bankruptcy case, that is the
5 second LTL bankruptcy case, on or about
6 April 4, 2023, correct?
7 **A. Yes.**
8 Q. All right.
9 MR. JONAS: And if you turn --
10 again, just to help guide us --
11 If you turn to page 8, Deane, if
12 we could just go to page 8.
13 Q. And, again, just to confirm, new
14 JJCI is now known as Johnson & Johnson HoldCo
15 NA Inc., correct?
16 **A. That is correct.**
17 Q. Okay. And if I refer to that as
18 "HoldCo," you will understand what I'm
19 talking about?
20 **A. Yes.**
21 Q. Okay. When did you first become
22 aware that the consumer business -- that
23 HoldCo's consumer business was going to be
24 spun out of HoldCo?
25 **A. I think I was generally aware that**

Page 72

1 **J. KIM**
2 **the consumer business was going to be spun**
3 **out of all the J&J entities when that was**
4 **announced years ago -- over a year ago.**
5 **I never thought -- I was not**
6 **thinking about HoldCo in particular or**
7 **Johnson & Johnson Consumer Inc. and when**
8 **assets were going to be spun out. And I**
9 **learned of that as we were going through the**
10 **process in March of this year of preparing**
11 **for the board meetings explaining the new**
12 **transaction.**
13 Q. Okay. I'm sorry, I lost the
14 thread there. What did you learn -- hold on.
15 What did you learn in March
16 relating to HoldCo?
17 **A. That HoldCo's assets -- that the J**
18 **-- the consumer assets of old JJCI had been**
19 **spun out of J&J Holdings CI.**
20 Q. Okay. And you became -- I take it
21 you became aware that that had occurred in
22 early January of 2023?
23 **A. It was later than that. I think**
24 **it was at least February or March that I**
25 **became aware of that.**

Page 73

1 **J. KIM**

2 Q. No, no, I'm sorry. I appreciate

3 that.

4 But you became aware that it had

5 occurred in early January, right?

6 **A. Yes.**

7 Q. Okay.

8 MR. JONES: I think the record

9 is still unclear here, notwithstanding

10 efforts by both of you, about the

11 timing of his awareness and of what he

12 was aware.

13 I believe it's you, Mr. Jonas,

14 whether you wish to clear that up.

15 BY MR. JONAS:

16 Q. Go ahead, Mr. Kim, if you want to

17 take a shot.

18 **A. So in February or March, I became**

19 **aware that earlier in January -- early**

20 **January, that assets -- the consumer assets**

21 **that were formally held by JJCI had been spun**

22 **out.**

23 Q. Okay. And the second Funding

24 Agreement, that agreement is between which

25 parties?

Page 74

1 **J. KIM**

2 **A. HoldCo and LTL.**

3 Q. Okay. And then the J&J support or

4 guarantee or however you want to refer to it,

5 that's taken up in a separate document which

6 you have referred to as the Support

7 Agreement, correct?

8 **A. Correct.**

9 Q. Okay. And, I guess, just to make

10 sure we touched on all the documents, there

11 is a third document, which is the Termination

12 and Replacement Agreement, correct?

13 **A. Correct.**

14 Q. Okay. So when you -- how was it

15 determined that the only counterparty to LTL

16 under the second Funding Agreement would be

17 HoldCo?

18 MR. JONES: Object to the

19 question to the extent it calls for

20 the sharing of privileged

21 communication or advice.

22 **A. Again, I'm going to refer to the**

23 **omnibus objection to the motions to dismiss**

24 **that goes into details or the history of this**

25 **and the rationale.**

Page 75

1 **J. KIM**

2 Q. Okay. I certainly appreciate

3 that.

4 The reason I'm going to ask the

5 question again is because I don't believe

6 that there is an explanation as to why

7 HoldCo, and only HoldCo, which is my

8 question, was included as a counterparty to

9 the second Funding Agreement.

10 So can you tell me now, at this

11 deposition, why only HoldCo was a

12 counterparty to the second Funding Agreement?

13 **A. Well, as explained in the**

14 **objection, the Third Circuit decision**

15 **rendered the Funding Agreement 1 void or**

16 **voidable. J&J's position was that it was**

17 **unenforceable.**

18 In order to deal with the

19 unenforceability and also to promote, again

20 -- promote a resolution of all the talc

21 claims that -- in a bankruptcy where we had

22 the support of the majority of claimants, it

23 was the position of the parties that the

24 original Funding Agreement had a guarantee by

25 J&J that was wholly voluntary.

Page 76

1 **J. KIM**

2 And so, that was no longer

3 something that -- voluntarily that needed to

4 be being the second Funding Agreement. So,

5 therefore, we thought -- the position was

6 that HoldCo itself had sufficient assets so

7 that it would not be rendered insolvent by

8 being the sole obligor to LTL in the second

9 bankruptcy.

10 To effectuate a resolution in

11 bankruptcy, the Support Agreement by J&J was

12 put in to fund an \$8.9 billion resolution

13 that had the support, evidenced by the

14 plaintiffs' Support Agreements, of attorneys

15 representing the majority of claimants.

16 So that's why HoldCo is the sole

17 obligor and J&J is -- has a Support Agreement

18 that puts in the \$8.9 billion in a

19 bankruptcy. That is laid out in our

20 objection, and I would refer to the

21 objection, again, to fully flush that out.

22 Q. The second Funding Agreement was

23 designed specifically so that LTL would be in

24 financial distress immediately prior to

25 filing bankruptcy for the second time,

Page 105

1 J. KIM

2 MR. JONES: Object as asked and

3 answered and discussed throughout the

4 morning, at his last deposition, and

5 in the PI hearing. That was in his

6 last deposition and in the PI hearing.

7 BY MR. JONAS:

8 A. And I'd also add, it's also --

9 again, I want to refer to the omnibus

10 objection that we filed that goes into this

11 in detail and lays out the basis. So, you

12 know, I think I testified to this numerous

13 times.

14 And, again, it is in our omnibus

15 objection, both the factual and legal basis

16 for this statement.

17 Q. And I'm asking you now, Mr. Kim,

18 for all the bases for your statement that the

19 Debtor believes there was a material risk

20 that the '21 Funding Agreement was not

21 enforceable because it had become void or

22 voided.

23 MR. JONES: Same objections --

24 THE WITNESS: Sorry, Jim, go

25 ahead.

Page 106

1 J. KIM

2 MR. JONES: Same objections to

3 the omnibus objection.

4 BY MR. JONAS:

5 A. Okay. So I'm going to incorporate

6 the reference, the omnibus objection, and all

7 the bases that are laid out in there. In

8 summary, but not to be -- again, just

9 referring to the objection for the full

10 accounting of this, because of the Third

11 Circuit opinion in LTL 1, the -- at least the

12 -- the Funding Agreement and at least the J&J

13 support part of that, there was a finding

14 that because it was -- the J&J support was

15 voluntarily given when it was not necessary

16 to be given, instead of enhancing the

17 bankruptcy, as we believed that it did, the

18 Third Circuit ruled that that instead

19 thwarted the bankruptcy.

20 We believe that, under several

21 legal theories including frustration of

22 purpose, mutual mistake, and I know there are

23 others, that the -- J&J took a position that

24 the 2021 Funding Agreement was unenforceable.

25 LTL took the position that it

Page 107

1 J. KIM

2 agreed that the -- that it frustrated the

3 purpose and that the legal theories presented

4 a material risk that the Funding Agreement

5 was no longer enforceable because it'd become

6 void or voidable.

7 Q. Thank you.

8 MR. JONAS: Can we just go off

9 the record for a second, Rebecca?

10 THE VIDEOGRAPHER: We are now

11 going off the record. The time is

12 12:20.

13 (Whereupon, a recess was held.)

14 THE VIDEOGRAPHER: We are now

15 back on the record. The time is

16 12:23.

17 MR. JONAS: The parties have

18 discussed and agreed that we will take

19 a break now at 12:23, and we will

20 reconvene at 1:00 p.m. Thank you.

21 THE VIDEOGRAPHER: We are now

22 going off the record. The time is

23 12:23.

24 (Whereupon, a lunch recess was

25 held.)

Page 108

1 J. KIM

2 ***AFTERNOON SESSION***

3 THE VIDEOGRAPHER: We are now

4 back on the record. The time is 1:02.

5 BY MR. JONAS:

6 Q. Mr. Kim, I want to quickly try and

7 wrap up comments or questions relating to Kim

8 number 2, your Declaration.

9 So let me ask --

10 MR. JONAS: And if, Deane, we

11 could go to paragraph 83 on page 29.

12 Q. The last sentence, which says,

13 "The Debtor believes that its pre-filing

14 financial condition is sufficiently

15 distressed to satisfy the standard

16 established by the Third Circuit."

17 I just want to make sure I have,

18 Mr. Kim, from you, because I don't think

19 we've asked about this previously, the bases

20 for that belief.

21 A. Yes. Okay. A, I would, again,

22 refer you and incorporate by reference the

23 objection that -- the omnibus objection to

24 the motion to dismiss that we filed that goes

25 into this at length.

Page 109

1 J. KIM
2 The summary would be that after
3 the Third Circuit's decision and rendered the
4 2021 Funding Agreement unenforceable, when we
5 entered into the new agreements, the primary
6 obligor under the Funding Agreement was
7 HoldCo.
8 And while HoldCo has sufficient
9 assets so that the LTL is not rendered
10 insolvent by the talc liabilities, in order
11 to deal with the talc liabilities, well, we
12 believe that HoldCo would be financially
13 distressed, and, therefore, LTL would be
14 financially distressed because HoldCo's
15 assets are not as liquid.
16 And that because of the liquidity
17 issues, it would have to sell the assets and
18 substantially impair its business in order to
19 pay, under the Funding Agreement, the
20 obligations related to the talc liabilities.
21 So that, in a nutshell, renders
22 LTL and HoldCo financially distressed.
23 Q. Okay. So let me just try and
24 break that down a little bit.
25 Under the second Funding

Page 110

1 J. KIM
2 Agreement, HoldCo would be obligated or
3 liable to LTL outside of bankruptcy, correct?
4 MR. JONES: Object as
5 inconsistent with the testimony he
6 just gave.
7 A. I'm sorry, can you repeat that
8 question?
9 Q. Sure. Let me try to make it
10 simpler. It was a confusing question.
11 After signing the second Funding
12 Agreement, had LTL not filed bankruptcy,
13 would HoldCo have obligations to it?
14 A. Yes, it would.
15 Q. And what would those -- strike
16 that.
17 Those obligations would be to fund
18 either cost and/or resolution of talc
19 liability, correct?
20 A. Correct.
21 Q. Okay. And so, I think what you
22 said earlier was, LTL was in financial
23 distress if it had -- because if it had
24 remained outside of bankruptcy, HoldCo would
25 not have the liquidity to satisfy its

Page 111

1 J. KIM
2 obligations under the Funding Agreement; is
3 that right?
4 A. Well, it would have -- so there is
5 sufficient liquidity, you know -- there is
6 sufficient assets to meet the Funding
7 Agreement, but because of -- again, because
8 of the cost of the talc liability, because of
9 the aberrant jury verdicts, because of
10 potential settlements that we'd have to enter
11 into, the -- HoldCo would, at some point,
12 have to, you know, imminently sell assets in
13 order to pay those obligations. And that
14 rendered both HoldCo and LTL under financial
15 distress.
16 Q. Okay. Thank you.
17 And is the answer you just gave --
18 it takes me back to, I think, your homework
19 assignment, but is the answer you just gave
20 based on some analysis or projections that
21 LTL prepared that showed that, you know, in
22 some period of time, you would have burned up
23 the \$400 million of HoldCo liquidity?
24 A. Well, so -- again, I have tried to
25 do my homework assignment. I did get a slide

Page 112

1 J. KIM
2 from -- that reminded me that, basically, our
3 burn rate was 10 to \$20 million a month.
4 Now, in the -- I just -- all
5 right. I have not been able to talk to Alli
6 Brown, because, of course, she's on trial who
7 did the first motion to dismiss, but there
8 are other factors that go into it. The, you
9 know, aberrant, the -- not only the monthly
10 spend, but the -- how much it cost to do a
11 particular trial, how many trials we can do.
12 Or now, because of the bankruptcy proceeding,
13 there has been, sort of, pent up -- I think
14 pent up litigation that we would expect to
15 increase.
16 So, based on all that information,
17 we believe that all contributes to the
18 financial distress, and that would be
19 information that we knew at the time.
20 Q. Okay. And that's helpful. Thank
21 you, Mr. Kim.
22 But, again, now -- now, with that
23 background, which is helpful, let me come to
24 my simpler question.
25 Is there a memo or a piece of

Page 113

1 J. KIM
2 paper or something that -- by way of an
3 analysis that shows what you've said, which
4 is that the \$400 million of cash that HoldCo
5 had, you know, wouldn't be sufficient such
6 that LTL would be in financial distress?
7 **A. Again, there is no piece of paper,**
8 **but we all know this history, including the**
9 **history of the Ingham verdict. So there is**
10 **information that everyone knew that was**
11 **available that people understood, but there**
12 **was no piece of paper analysis for future**
13 **liability.**
14 Q. Okay. So is there any -- let me
15 -- I want to -- and this is important, so let
16 me make sure I understand.
17 Other than the 10 to \$20 million a
18 month legal defense costs, at least based on
19 historical numbers, and fear of adverse jury
20 verdicts, was there --
21 MR. JONES: Somebody needs to go
22 on mute, please.
23 MR. JONAS: Thank you.
24 Q. So let me back up.
25 MR. JONAS: Anybody -- everybody

Page 114

1 J. KIM
2 on this call should be on mute, unless
3 you are speaking, which is probably
4 nobody but me. Thank you.
5 Q. So let me try it again, Mr. Kim.
6 I want to make sure I understand
7 all the factors that go into or went into
8 LTL's belief that its pre-filing financial
9 condition was sufficiently distressed to
10 satisfy the standards established by the
11 Third Circuit, just to give you the -- set
12 the table.
13 Other than fear of adverse jury
14 verdicts and the at least historical monthly
15 cost figure of 10 to -- defense cost of 10 to
16 \$20 million a month, were there any other
17 factors that you -- that went -- that go into
18 LTL's conclusion that it was in sufficient
19 distress?
20 **A. Yes, I would say -- so I would not**
21 **-- first, I would disagree with your**
22 **characterization of fear of adverse verdicts.**
23 **We certainly had a history of adverse**
24 **verdicts, and we've had a history of aberrant**
25 **adverse verdicts. So there is historical**

Page 115

1 J. KIM
2 **adverse verdicts that we know about. It's**
3 **not just fear of some adverse verdict that**
4 **may come in the future.**
5 **So, you know, there's the**
6 **verdicts, there's the defense cost, there's**
7 **the increase in litigation. There is**
8 **potential settlements that we have to enter**
9 **into because of the increased pressure.**
10 **There are, you know, other components of the**
11 **cost that -- you know, expert fees that may**
12 **come up.**
13 **There are -- you know, running**
14 **these litigations just is -- and the --**
15 **again, the sheer number of cases that were in**
16 **the system and are growing.**
17 **The MDL was just about -- so,**
18 **remember, the MDL has been in, sort of, a**
19 **stasis for years doing just expert stuff. At**
20 **some point, that MDL is going to -- the MDL**
21 **Judge will have to take the cases and bring**
22 **them back into the system. That is a**
23 **dramatic increase in cost that, historically,**
24 **have not been accounted for.**
25 **I think I mentioned, you know,**

Page 116

1 J. KIM
2 **potential settlements. And all of this**
3 **pressure puts pressure on the company that,**
4 **you know, for unrelated reasons, that it**
5 **can't try all these cases, it may be forced**
6 **to settle cases from time to time.**
7 **So there are lots of components of**
8 **this that we understood were out there.**
9 Q. Okay. And, again, thank you for
10 the complete answer.
11 But -- and let me just confirm,
12 other than everything you've just mentioned,
13 there is no other factors that led to LTL's
14 belief or conclusion that it was in financial
15 distress after signing Funding Agreement 2,
16 right?
17 **A. I don't know if I've listed every**
18 **factor that goes into the cost of the**
19 **litigation or the liability associated with**
20 **litigation. But those are the main costs and**
21 **they were substantial.**
22 Q. Okay. And, again, no -- neither
23 the company nor any of its professionals,
24 financial advisors, lawyers, no one prepared
25 a formal memo, report, or analysis in the

Page 201

1 J. KIM
2 bankruptcy. And that's for future --"
3 And then Judge Fuentes, "I assume
4 that would protect people who were exposed
5 years down the road. They would not be
6 subject to bankruptcy, of course. But they
7 would be protected."
8 Did I read that correctly?
9 **A. You've read that correctly.**
10 Q. Do you recall Judge Fuentes asking
11 Mr. Lamken those questions?
12 **A. I don't recall those questions.**
13 Q. Okay. Do you believe -- is a fair
14 interpretation of this client questioning
15 that the way to protect future claimants is
16 to permit them to litigate in the tort
17 system, true?
18 **A. I'm not sure what the Court is**
19 **suggesting. If that's what he is saying, I**
20 **disagree with that.**
21 Q. What steps did you take as the
22 Chief Legal Officer of LTL Management to
23 protect the assets available to future talc
24 claimants?
25 **A. I would say the plan, it protects**

Page 202

1 J. KIM
2 **future talc claimants.**
3 Q. In what way?
4 **A. The plan provides for future talc**
5 **claimants. I think payments go out to**
6 **25 years. They are accounted for in the**
7 **plan. I think it's a much better protection**
8 **for plaintiffs in the future than the tort**
9 **system.**
10 Q. Does LTL Management believe that
11 it will not have -- in the tort system, will
12 not have sufficient funding to litigate and
13 settle talc cases for the next 25 years?
14 MR. JONES: Object to form.
15 Foundation.
16 **A. I believe LTL and HoldCo have**
17 **sufficient assets to take care of the talc**
18 **liability.**
19 Q. In the tort system?
20 **A. Outside of bankruptcy. But,**
21 **again, I think there is liquidity issues that**
22 **are present, but the -- we believe that there**
23 **is sufficient assets to resolve the talc**
24 **liabilities so that LTL and HoldCo are not**
25 **insolvent.**

Page 203

1 J. KIM
2 MR. JONES: Are not insolvent or
3 nonsolvent?
4 **THE WITNESS: Are not insolvent,**
5 **yeah, I'm sorry.**
6 **Am I dropping out? Let me get**
7 **closer here.**
8 BY MR. THOMPSON:
9 **A. Yeah, that LTL and HoldCo are not**
10 **insolvent.**
11 MR. JONES: Clay, are you there?
12 **THE WITNESS: I think he is**
13 **frozen.**
14 MR. JONES: Can I be heard, by
15 the way?
16 **THE WITNESS: You can. Well, at**
17 **least I can hear you.**
18 MR. JONES: I think Mr. Thompson
19 may be frozen.
20 THE VIDEOGRAPHER: It looks like
21 he just dropped off as well.
22 MR. JONES: Let's give him one
23 moment to come back.
24 THE COURT REPORTER: Counsel, do
25 you still want to stay on the record?

Page 204

1 J. KIM
2 MR. JONES: Any sign of him?
3 THE COURT REPORTER: No.
4 MR. JONES: So, John, do you
5 want to proceed and we'll -- if he
6 comes back, we'll let him finish?
7 I'll leave it to you.
8 MR. RUCKDESCHEL: Let me just
9 text him real quick and make sure it's
10 not something.
11 The real question is -- can we
12 go off the record for a second?
13 THE VIDEOGRAPHER: We are now
14 going off the record. The time is
15 3:17.
16 (Whereupon, a recess was held.)
17 THE VIDEOGRAPHER: We are now
18 back on the record. The time is 3:19.
19 EXAMINATION BY
20 MR. RUCKDESCHEL:
21 Q. Mr. Kim, I'm John Ruckdeschel. I
22 represent Paul Crouch in this matter. I have
23 a few questions for you that I think we can
24 move through pretty quickly.
25 In response to one of

Page 217

1 J. KIM
2 first Funding Agreement?
3 **A. At the time with its -- under the**
4 **facts that we knew then, yes.**
5 Q. That the amount of funding
6 available to talc claimants was at least
7 \$61 billion; is that right?
8 **A. Well, I think he is just talking**
9 **about what the backstop is. I'm talking**
10 **about the ceiling, you know, the potential**
11 **cap. And he is saying that the cap increases**
12 **depending upon distributions at JJCI. That's**
13 **all that says.**
14 Q. And he is also saying that if
15 there is an increase in value of new JJCI or
16 of spun off assets from JJCI, that inures to
17 the benefit of the talc claimants, right?
18 MR. JONES: Object to form.
19 **A. Well -- yeah, it talks about the**
20 **cap. It doesn't ensure -- the liability is**
21 **always what the liability is, which is what**
22 **the -- the talc liability.**
23 **We all think the talc liability**
24 **approaches \$61 million. But, again, I think,**
25 **as I've testified, we don't think it**

Page 218

1 J. KIM
2 **approaches \$30 billion.**
3 **But this is the cap in the Funding**
4 **Agreement and the cap increases, as stated**
5 **here.**
6 Q. Under both the first and second
7 Funding Agreement, LTL Management can
8 litigate in the tort system and resolve or
9 try, count cases for less than \$60 billion
10 over the next 30 years, right?
11 MR. JONES: Object to the form
12 of the question. And a hypothetical.
13 **A. Yeah, again, there is huge**
14 **variability and volatility. But we believe**
15 **that the \$30 billion is sufficient to deal**
16 **with the talc liability.**
17 Q. And that would include outside of
18 the tort system, right? That's enough money
19 to litigate and settle cases in the tort
20 system, right?
21 **A. That would be outside of**
22 **bankruptcy, yes.**
23 Q. Okay. "Our position," -- this is
24 Mr. Katyal again -- "and Judge Kaplan found
25 this, too, is that we believe that \$61

Page 219

1 J. KIM
2 billion, which is of course only a floor, it
3 could go up, is enough to pay a
4 hundred percent of all valid claims. And
5 what I say valid claims, it excludes two
6 things. It excludes the deadweight losses of
7 billions and billions of dollars paid to
8 lawyers for defending against this."
9 Did I read that correctly?
10 **A. You did. And I would change that**
11 **to that \$30 billion is enough to pay**
12 **100 percent of all valid claims. Again, this**
13 **is just a cap that was part of that -- of**
14 **that feature of that Funding Agreement. But**
15 **it's different than the value of the Funding**
16 **Agreement.**
17 Q. Okay. LTL Management 2.0 under
18 the 2023 Funding Agreement has capacity to
19 pay the talc liabilities whatever they are
20 inside or outside of bankruptcy, right?
21 **A. Well, after the -- inside the**
22 **bankruptcy, we knew what the liability is.**
23 **Inside the bankruptcy, the liability is**
24 **\$9.8 billion.**
25 Q. But they have sufficient funding

Page 220

1 J. KIM
2 to pay the liability outside of bankruptcy
3 too, don't they?
4 **A. They do. They have sufficient**
5 **assets. Again, there are liquidity issues,**
6 **but they have sufficient assets.**
7 Q. Understood.
8 "Now you had asked before, Your
9 Honor, I just have to slightly correct
10 something. I understand that the funding
11 agreement does have provisions for funding
12 outside of bankruptcy."
13 And then, I believe that's Judge
14 Ambros, said, "Yeah, that's what I thought."
15 Did I read that correctly?
16 **A. You did read that correctly.**
17 Q. And Mr. Katyal was correct when he
18 said this, right?
19 **A. Under the circumstances there --**
20 **there are circumstances where, outside of**
21 **bankruptcy, the Funding Agreement is**
22 **available.**
23 Q. Do you recall when Mr. -- when
24 Judge Ambros asked Mr. --
25 MR. JONES: I'm sorry, Clay. I